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November 29, 2005

VIA HAND DELIVERY

Hon. Ron Jones, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition for Arbitration of Aeneas Communications, LLC with  
BellSouth Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996*  
Docket No. 04-00017

Dear Chairman Jones:

Enclosed are the original and fourteen copies of BellSouth's *Response to Aeneas' Request to Supplement its Petition for Arbitration with a New Issue*.

A copy is being provided to counsel of record.

Very truly yours,

  
Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Petition for Arbitration of Aeneas Communications, LLC with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*

Docket No. 04-00017

**BELLSOUTH'S RESPONSE TO AENEAS' REQUEST  
TO SUPPLEMENT ITS PETITION FOR ARBITRATION  
WITH A NEW ISSUE**

On November 4, 2005, Aeneas Communications, LLC ("Aeneas") petitioned for leave to raise a new issue in the parties' 2004 arbitration proceeding ("*Supplemental Petition*"). BellSouth Telecommunications, Inc. ("BellSouth") opposes Aeneas' *Supplemental Petition*. The new arbitration issue proposed by Aeneas was not set forth in either its original *Petition for Arbitration* or in BellSouth's *Response*. Section 252(b)(4)(A) of the Telecommunications Act of 1996 ("the Act") prohibits the Authority from arbitrating issues not raised in the petition or response.

The only issue raised in the *Supplemental Petition* relates to porting charges.<sup>1</sup> No such issue was raised in Aeneas' *Petition for Arbitration* filed in this proceeding. In the *Petition*, which was filed on January 21, 2004, Aeneas raised a number of issues, none of which referenced or even related to porting charges.

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<sup>1</sup> See *Supplemental Petition*, p. 2.

BellSouth's *Response* to the *Petition for Arbitration*, filed on February 17, 2004, also did not raise any porting charge issue.

The Act requires that the Authority limit its consideration to the issues set forth in the *Petition for Arbitration* and in the *Response*. Aeneas' *Supplemental Petition* is, therefore, fatally flawed and should be dismissed.

The Act provides:

(A) The State Commission ***shall limit*** its consideration of any petition under paragraph (1) (and any response thereto) ***to the issues set forth in the petition and in the response***, if any, filed under paragraph (3). (emphasis added).<sup>2</sup>

The Authority has previously denied a party's request to add new issues to an arbitration based on Section 252(b)(4)(A) of the Act. On August 2, 2004, the Authority's Hearing Officer entered an *Order* denying the Commercial Mobile Radio Service Providers' request to add issues to their arbitration proceeding. The Coalition of Small LECs and Cooperatives argued that the proposed issues were not set forth in the petition for arbitration or the response to the petition as required by the Act. Following arguments by the parties, the Hearing Officer denied the request to add issues to the arbitration, relying on Section 252(b)(4)(A).<sup>3</sup>

In addition to being barred by the Act, Aeneas' request is simply unreasonable. BellSouth has previously notified Aeneas that it is willing to consider Aeneas' request regarding porting charges in the context of negotiating a new interconnection agreement. Any new interconnection agreement must, of

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<sup>2</sup> See Section 252(b)(4)(A).

<sup>3</sup> See *Order Denying Request to Add Issues to the Final Joint Issues Matrix*, entered August 2, 2004 in Docket 03-00585. The Hearing Officer's *Order* was not challenged and became a final agency order pursuant to T.C.A. § 4-5-318

course, comply with applicable law, including the FCC's *TRO* and *TRRO*. Aeneas wants BellSouth to concede the porting charge issue, but has declined to negotiate a new *TRO*- and *TRRO*-compliant agreement. Aeneas simply wants to focus on one issue it deems advantageous to itself, while ignoring numerous other matters that are the subject of FCC orders and that also need to be addressed in the new agreement.

### CONCLUSION

BellSouth requests that the Authority not grant Aeneas' request to amend its 2004 petition for arbitration.<sup>4</sup> Aeneas' *Supplemental Petition*, which seeks to add a new issue to this arbitration proceeding, should be denied based on Section 252(b)(4)(A) of the Act.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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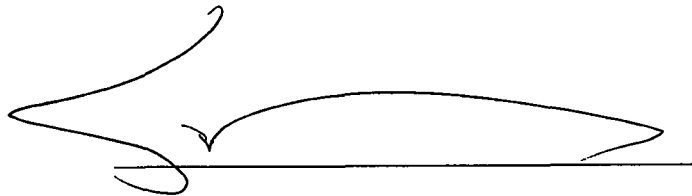
<sup>4</sup> If the Authority grants Aeneas' *Supplemental Petition*, BellSouth will file a response addressing the merits of the claim.

### CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2005, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read 'Paul Rice', is written over a horizontal line.